

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 107 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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PRAVINKUMAR ISHWARLAL SUTARIYA

Versus

STATE OF GUJARAT

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Appearance:

HL PATEL ADVOCATES for Petitioners

MR TRIVEDI, A.P.P. for Respondent No. 1

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/06/1999

ORAL JUDGEMENT

1. Heard Mr. Asim Pandya for M/s H.L. Patel  
Advocates for the petitioners.

2. Rule. Mr. Trivedi waives service of Rule on  
behalf of the State. In the peculiar facts and  
circumstances, the matter is finally decided at the  
request of the parties.

3. The revisioners herein challenge the order passed by the learned Additional Sessions Judge, Bharuch, below Ex.130, in Sessions Case No.63 of 1991.

4. The revisioners herein are the accused in the said Sessions Case No.63 of 1991, who are being tried for the offences punishable under Sections 147, 148, 149, 302, 304 and 114 of the Indian Penal Code.

5. Pending the trial, the revisioners tendered application Ex.130 to the learned Additional Sessions Judge, praying for examination of the Executive Magistrate, who had recorded the dying declaration of the victim, as a Court witness, in exercise of powers under Section 311 of the Code of Criminal Procedure. The learned Additional Sessions Judge, after considering the submissions made before him, came to the conclusion that the trial is yet not over, the defence can examine this witness as a defence witness, and the Court may exercise these powers sparingly only thereafter if it is found necessary to examine this witness to reach to a just conclusion and, therefore, rejected the application. This order is challenged before this Court by way of this revision application.

6. Mr. Pandya submitted that, in light of the decision in Mohanlal S. Soni v. Union of India, 32(2) GLR 974, the learned Additional Sessions Judge ought to have exercised his discretion and examined the witness, so that truth can be reached. His case is that in the dying declaration, the declarant has not implicated the accused persons and, therefore, examination of the Executive Magistrate is essential to reach to the truth by the Trial Court, which aspect has been overlooked by the learned Additional Sessions Judge while passing the impugned order.

7. On the other hand, Mr. Trivedi's contention is that the trial is yet not over. The defence can very well examine this witness as a defence witness and, if the defence chooses not to examine the witness, the Court may, at that stage, consider examining of the witness exercising powers under Section 311 of the Code of Criminal Procedure. There is no illegality, incorrectness or impropriety in the impugned order. No prejudice is likely to be caused to the revisioners as the dying declaration is already brought on record and exhibited and, therefore, what is stated in the dying declaration is already part of the record and the Court may very well look into it while deciding the case. As

such, no further material is likely to come on record to provide further benefit to revisioners by examining this witness. Under the circumstances, the impugned order passed by the learned Additional Sessions Judge requires no interference.

8. Considering rival side contentions, it amply clear that the Trial is yet not over. The defence can very well examine the Executive Magistrate as a defence witness. The witness is not expected to state anything more than what is declared before him in the dying declaration. That dying declaration is already on record of the Court and, therefore, no prejudice is likely to be caused to the accused revisioners by virtue of order impugned in this revision.

9. No illegality, impropriety or incorrectness of any manner is shown to this Court sufficient enough to persuade this Court to exercise revisional jurisdiction. Refusal to use discretion by the lower Court for justifiable reasons would not warrant any interference by this Court. The revision application, therefore, deserves to be rejected and is, accordingly, rejected. Rule is discharged.

10. This Court may not be taken to have closed the doors for the revisioners to examine the witness in question as a defence witness.

[ A.L. DAVE, J. ]

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